

AMENDED IN SENATE JANUARY 9, 2006

AMENDED IN SENATE JANUARY 4, 2006

AMENDED IN SENATE APRIL 18, 2005

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 551

Introduced by Senator Lowenthal

February 18, 2005

An act to amend ~~Sections 1369.510 and~~ *Section 1373* of, to add Section 1363.7 to, and to add Chapter 11 (commencing with Section 1380.010) to Title 6 of Part 4 of Division 2 of the Civil Code, relating to common interest developments, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 551, as amended, Lowenthal. Common interest developments: ombudsperson.

Existing law defines and regulates common interest developments, which include condominiums and planned developments. Existing law requires that a common interest development be managed by an association, and establishes requirements for association operating rules and meetings and for the resolution of specified disputes.

This bill would, until January 1, 2011, establish in the Department of Consumer Affairs, the Office of the Common Interest Development Ombudsperson. The bill would require the ombudsperson to, among other things, offer training materials and courses to common interest development directors, officers, and owners, in subjects relevant to the operation of a common interest development and the rights and duties

of an association or owner. The bill would require the ombudsperson to maintain a toll-free telephone number and Internet Web site for purposes of further providing that information and assistance, and would require an association director or agent to meet certain requirements in that regard. ~~The bill would authorize the ombudsperson to provide assistance in resolving common interest development disputes, and would require a specified fee for that resolution.~~ The bill would impose a biennial association fee on common interest development associations to fund the administration of the provisions of the bill, for deposit in a newly created fund, the Fee Account of the Common Interest Development Ombudsperson Fund. Because the funds in that account would be continuously appropriated, the bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1363.7 is added to the Civil Code, to
2 read:

3 1363.7. An association shall provide its members with annual
4 written notice of the Internet Web site address and toll-free
5 telephone number of the Common Interest Development
6 Ombudsperson established pursuant to Chapter 11 (commencing
7 with Section 1380.010).

8 ~~SEC. 2. Section 1369.510 of the Civil Code is amended to~~
9 ~~read:~~

10 ~~1369.510. As used in this article:~~

11 (a) ~~“Alternative dispute resolution” means mediation,~~
12 ~~arbitration, conciliation, or other nonjudicial procedure, including~~
13 ~~mediation pursuant to Section 1380.300, that involves a neutral~~
14 ~~party in the decisionmaking process. The form of alternative~~
15 ~~dispute resolution chosen pursuant to this article may be binding~~
16 ~~or nonbinding, with the voluntary consent of the parties.~~

17 (b) ~~“Enforcement action” means a civil action or proceeding,~~
18 ~~other than a cross-complaint, for any of the following purposes:~~

19 (1) ~~Enforcement of this title.~~

20 (2) ~~Enforcement of the Nonprofit Mutual Benefit Corporation~~
21 ~~Law (Part 3 (commencing with Section 7110) of Division 2 of~~
22 ~~Title 1 of the Corporations Code).~~

~~(3) Enforcement of the governing documents of a common interest development.~~

~~SEC. 3.~~

SEC. 2. Section 1373 of the Civil Code is amended to read:

1373. (a) The following provisions do not apply to a common interest development that is limited to industrial or commercial uses by zoning or by a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:

(1) Section 1356.

(2) Article 4 (commencing with Section 1357.100) of Chapter

2.

(3) Subdivision (b) of Section 1363.

(4) Section 1365.

(5) Section 1365.5.

(6) Subdivision (b) of Section 1366.

(7) Section 1366.1.

(8) Section 1368.

(9) Section 1378.

(10) Chapter 11 (commencing with Section 1380.010).

(b) The Legislature finds that the provisions listed in subdivision (a) are appropriate to protect purchasers in residential common interest developments, however, the provisions may not be necessary to protect purchasers in commercial or industrial developments since the application of those provisions could result in unnecessary burdens and costs for these types of developments.

~~SEC. 4.~~

SEC. 3. Chapter 11 (commencing with Section 1380.010) is added to Title 6 of Part 4 of Division 2 of the Civil Code, to read:

CHAPTER 11. COMMON INTEREST DEVELOPMENT

OMBUDSPERSON PILOT PROJECT

Article 1. Definitions

1380.010. Unless the provision or context otherwise requires, the definitions in this article govern the construction of this chapter.

1 1380.020. “Owner” means the owner of a separate interest.

2 1380.030. “Person” includes a natural person, firm,
3 association, organization, partnership, business trust, corporation,
4 limited liability company, or public entity.

5
6 Article 2. Administration
7

8 1380.100. The Legislature finds and declares all of the
9 following:

10 (a) There are more than 36,000 residential common interest
11 developments in California, comprising more than 3,000,000
12 dwellings. Common interest developments comprise
13 approximately one-quarter of the state’s housing stock.

14 (b) Managing a common interest development is a complex
15 responsibility. Community associations are run by volunteer
16 directors who may have little or no prior experience in managing
17 real property, operating a nonprofit association or corporation,
18 complying with the law governing common interest
19 developments, and interpreting and enforcing restrictions and
20 rules imposed by the governing documents of the common
21 interest development. Homeowners may not fully understand
22 their rights and obligations under the law and the governing
23 documents. Mistakes and misunderstandings are inevitable and
24 may lead to serious, costly, and divisive problems. The Common
25 Interest Development Ombudsperson seeks to educate
26 community association officers and homeowners as to their legal
27 rights and obligations. Effective education can prevent or reduce
28 the severity of problems within a common interest development.

29 (c) The principal remedy for a violation of common interest
30 development law is private litigation. Litigation is not an ideal
31 remedy for many common interest development disputes, where
32 the disputants are neighbors who must maintain ongoing
33 relationships. The adversarial nature of litigation can disrupt
34 these relationships, creating animosity that degrades the quality
35 of life within the community and makes future disputes more
36 likely to arise. Litigation imposes costs on a common interest
37 development community as a whole, costs that must be paid by
38 all members through increased assessments. Many homeowners
39 cannot afford to bring a lawsuit and are effectively denied the
40 benefit of laws designed for their protection.—The Common

~~Interest Development Ombudsperson provides a neutral, nonjudicial forum for resolution of common interest development disputes. Many disputes can be resolved inexpensively, informally, and amicably through ombudsperson-facilitated mediation.~~

(d) Anecdotal accounts of abuses within common interest developments create continuing public demand for reform of common interest development law. This results in frequent changes to the law, making it more difficult to understand and apply and imposing significant transitional costs on common interest developments statewide. By collecting empirical data on the nature and incidence of problems within common interest developments, the Common Interest Development Ombudsperson provides a sound basis for prioritizing reform efforts, thereby increasing the stability of common interest development law.

(e) The costs of the Common Interest Development Ombudsperson Pilot Project shall be borne entirely by common interest development homeowners, through imposition of a biennial fee.

1380.110. (a) There is in the Department of Consumer Affairs the Office of the Common Interest Development Ombudsperson, under the supervision and control of the Director of Consumer Affairs.

(b) The Director of Consumer Affairs shall employ a Common Interest Development Ombudsperson and other officers and employees as necessary to discharge the requirements of this chapter. The Common Interest Development Ombudsperson shall have the powers delegated by the director.

(c) The ombudsperson shall adopt rules governing practices and procedures under this chapter. Any rule adopted under this subdivision is subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(d) Information and advice provided by the ombudsperson has no binding legal effect and is not subject to the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(e) The ombudsperson may convene an advisory committee to make recommendations on matters within the ombudsperson's jurisdiction, ~~including the development of standards for mediation services provided under this chapter to ensure the quality and integrity of the mediation process. A member of an~~ *jurisdiction. A member of an* advisory committee shall receive per diem and expenses pursuant to Section 103 of the Business and Professions Code. In selecting the members of an advisory committee, the ombudsperson shall ensure a fair representation of the interests involved.

1380.120. The Common Interest Development Ombudsperson shall report annually to the Legislature, no later than October 1 of each year. The report shall include all of the following information:

(a) Annual workload and performance data, including the number of requests for assistance received, the manner in which a request was or was not resolved, and the staff time required to resolve the inquiry. For each category of data, the ombudsperson shall provide subtotals based on the type of question or dispute involved in the request.

(b) Analysis of the most common and serious types of disputes within common interest developments, along with any recommendations for statutory reform to reduce the frequency or severity of those disputes.

(c) On or before January 1, 2009, the ombudsperson shall submit recommendations to the Legislature on the following topics:

(1) Whether the ombudsperson should be authorized to enforce common interest development law.

(2) Whether the ombudsperson should be authorized to oversee association elections.

(3) Whether the scope of application of Section 1380.230 should be narrowed or broadened.

1380.130. (a) On filing information with the Secretary of State every two years, pursuant to subdivision (a) of Section 1363.6, an association shall submit a Common Interest Development Ombudsperson Fee. This fee is in addition to the fee submitted pursuant to Section 1363.6. Failure to submit the Common Interest Development Ombudsperson Fee is deemed noncompliance with Section 1363.6.

1 (b) The Common Interest Development Ombudsperson Fee
2 shall equal the number of separate interests within the association
3 multiplied by the biennial fee amount. The initial biennial fee
4 amount is ten dollars (\$10).

5 (c) An association is excused from paying the fee for a
6 separate interest if another association has paid the fee for that
7 separate interest. An association that is excused from paying the
8 fee for a separate interest shall certify, on a form developed by
9 the Secretary of State for that purpose, that another association
10 has paid the fee for that separate interest. The ombudsperson may
11 adopt, by regulation, a rule governing which association is
12 required to pay the fee for a separate interest that is part of more
13 than one association.

14 (d) The Common Interest Development Ombudsperson shall
15 increase or decrease the biennial fee amount every two years to
16 provide only the revenue that it estimates will be necessary for its
17 operation during the next two-year period. The biennial fee
18 amount shall not exceed twenty dollars (\$20).

19 (e) An assessment increase necessary to recover the fee
20 imposed by this section shall not be included in any calculation
21 for purposes of subdivision (b) of Section 1366.

22 1380.140. Common Interest Development Ombudsperson fee
23 revenue received by the Secretary of State and fee revenue
24 received by the Common Interest Development Ombudsperson
25 shall be transferred to the State Treasurer and placed in the Fee
26 Account of the Common Interest Development Ombudsperson
27 Fund, which is hereby created. All funds in the Fee Account of
28 the Common Interest Development Ombudsperson Fund are
29 continuously appropriated to the ombudsperson, to be used
30 exclusively for expenditures necessary for the proper
31 administration of this chapter.

32 1380.150. (a) This chapter shall remain in effect only until
33 January 1, 2011, and as of that date is repealed, unless a later
34 enacted statute that is enacted before January 1, 2011, deletes or
35 extends that date.

36 (b) The Common Interest Development Ombudsperson Pilot
37 Project is subject to review by the Joint Committee on Boards,
38 Commissions, and Consumer Protection pursuant to Division 1.2
39 (commencing with Section 473) of the Business and Professions
40 Code.

Article 3. Education

1380.200. (a) The Common Interest Development Ombudsperson shall offer training materials and courses to common interest development directors, officers, and owners, in subjects relevant to the operation of a common interest development and the rights and duties of an association or owner.

(b) The ombudsperson may charge a fee for training materials or courses, not to exceed their actual cost.

1380.210. The Common Interest Development Ombudsperson shall maintain a toll-free telephone number to provide information or assistance on matters relating to common interest developments.

1380.220. (a) The Common Interest Development Ombudsperson shall maintain an Internet Web site, which shall provide all of the following information:

(1) The text of this title, the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), and any other statute or regulation that the ombudsperson determines would be relevant to the operation of a common interest development or the rights and duties of an association or owner.

(2) Information concerning nonjudicial resolution of disputes that may arise within a common interest development, including contacts for locally available dispute resolution programs organized pursuant to Chapter 8 (commencing with Section 465) of Division 1 of the Business and Professions Code.

(3) A description of the services provided by the ombudsperson and information on how to contact the ombudsperson for assistance.

(4) An analysis, prepared each year, of legislative changes to common interest development law.

(5) Any other information that the ombudsperson determines would be useful to an association or owner.

(b) Information provided on the ombudsperson's Internet Web site shall also be made available in printed form. The ombudsperson may charge a fee for the purchase of printed material, not to exceed the actual cost of printing and delivery.

1380.230. (a) Within 60 days of assuming office as an association director or providing services as a managing agent,

1 an association director or managing agent shall certify that the
2 director or managing agent has read each of the following:

3 (1) The declaration, articles of incorporation or association,
4 and bylaws of the association that the director or managing agent
5 serves.

6 (2) This title or, if the Common Interest Development
7 Ombudsperson prepares a detailed summary of the requirements
8 of this title, that summary.

9 (b) A director shall file the certification required by this
10 section with the ombudsperson. A managing agent shall file the
11 certification required by this section with the association served
12 by that managing agent.

13 (c) For the purposes of this section, “managing agent” means a
14 person or entity who, for compensation or in expectation of
15 compensation, exercises control over the assets of a common
16 interest development. “Managing agent” does not include a
17 regulated financial institution operating within the normal course
18 of its regulated business practice.

19
20 ~~Article 4. Informal Dispute Resolution~~

21
22 ~~1380.300. (a) Any interested person may request that the~~
23 ~~Office of the Common Interest Development Ombudsperson~~
24 ~~provide assistance in resolving a dispute involving the law~~
25 ~~governing common interest developments or the governing~~
26 ~~documents of a common interest development.~~

27 ~~(b) On receipt of a request for assistance, the ombudsperson~~
28 ~~shall, within the limits of the available resources, confer with the~~
29 ~~interested parties and assist in efforts to resolve the dispute by~~
30 ~~mutual agreement of the parties. If a dispute cannot be resolved~~
31 ~~through informal conference, the ombudsperson may offer to~~
32 ~~mediate the dispute.~~

33 ~~(c) The ombudsperson may, by regulation, adopt a fee for~~
34 ~~mediation services of not more than twenty-five dollars (\$25) per~~
35 ~~mediation.~~

36 ~~(d) The ombudsperson may contract with private parties or~~
37 ~~organizations, such as those dispute resolution programs~~
38 ~~organized pursuant to Chapter 8 (commencing with Section 465)~~
39 ~~of Division 1 of the Business and Professions Code, to provide~~
40 ~~mediation services pursuant to this section. These individuals or~~

1 ~~organizations shall be compensated for their mediation services~~
2 ~~from the Fee Account of the Common Interest Development~~
3 ~~Ombudsperson Fund, created in Section 1380.140, at a rate to be~~
4 ~~mutually determined by the Ombudsperson and the service~~
5 ~~provider.~~

6 ~~(c) Chapter 2 (commencing with Section 1115) of Division 9~~
7 ~~of the Evidence Code applies to mediation initiated under this~~
8 ~~section.~~

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